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Opening Statement

This is a time of unprecedented opportunity to enhance value and efficiency when developing and distributing required compliance communications such as summary annual reports, annual notices and summary plan descriptions. Advances in technology combined with extensive learnings from past experience can inform new approaches that will lighten the administrative burden, save on production/distribution costs, facilitate easy updates and better serve employees. By creating more readable, user-friendly, navigable content, these required documents can become essential reference guides for employees and the cornerstone for effective benefits communications. This testimony opens with “current state” analysis that sets the context for recommendations on how to streamline administration and enhance the effectiveness of mandated disclosures.

Setting the Context for Recommendations

- **Most Americans are in line to receive information online.** According to a 2015 survey conducted by the Pew Research Center, 92% of U.S. adults own a cellphone and 68% own a smartphone. The survey also indicates that 73% of U.S. adults own a laptop or desktop computer.
- **Headlines first, details to follow.** Most employees prefer a hierarchy of information. This is not surprising when you consider that people are now used to receiving their information in bite-sized chunks (i.e., whatever amount of content will fit on their smartphone screen). They want to view the highlights and key points quickly, and then receive direction or a link to more detailed information for when it’s needed. When the details are needed, employees expect the documents to be readily navigable and the information to be easy to find. The simpler we can make the user experience, the more valuable the communication becomes.
- **Timing is everything.** Currently, the timing requirements for required notices are staggered. For instance:
 - The Medicare notice is typically distributed in October
 - The CHIP notice changes in January and July
 - The Marketplace notice is sent only upon hire
 - HIPAA notices get distributed once every three years.

The list goes on, but the bottom line is that the differences in timing add a tremendous burden to HR, administrators and employees.

- **Employers are already going outside the box.** Many companies are ignoring the safe harbor regulations and professional counsel advice regarding electronic distribution of SPDs, particularly the active consent requirements. Employers feel like the risk of noncompliance is outweighed by the expedience and significant cost savings resulting from electronic distribution.
- **The language barrier.** Many employees believe that SARs, annual notices and SPDs are not written in a user-friendly, easily understandable way that offers the most communications and educational value.

Recommendations for Mandated Disclosures

- **Consolidate notices and align timing.** We typically encourage employers to provide a booklet of annual notices during annual enrollment. This approach would be even easier if timing for required notices was made consistent to the extent possible.
- **Broaden the safe harbor rules for notices and SPDs.** This would enable more employers to post documents electronically – an increasingly viable option since so many Americans have computer access (even if only at home). This would significantly ease the burden on employers, reducing the need for costly printing and enabling quicker and more effective document updates.
- **Mandate an “SPD at-a-Glance” document.** This document, ideally limited to two pages, would provide the key points of plan information that employees typically look for, such as:
 - Eligibility
 - Cost of coverage, including a summary of cost sharing – from a mandated list of choices (similar to SBC prescribed-language)
 - How and when to enroll – from a mandated list of choices (similar to SBC-prescribed language)
 - Type of benefits offered by plan – from a mandated list of choices (similar to SBC-prescribed language)
 - Where to go for more information and how to access the full SPD (e.g., online or via an HR representative).

The “SPD at-a-Glance” document would be subject to the same distribution rules (or the revised ones that we are contemplating today) that currently apply for SPDs, and it would transfer responsibility for accessing the SPD to the employees. In addition, it will be much more cost-effective to print and distribute a brief notice rather than a lengthy SPD.

- **Consider passive consent for electronic receipt of documents.** The concept of passive consent has taken hold in other areas of benefits. For example, some employers have added an auto-escalation feature to their 401(k) plans that will automatically increase a participant’s contribution by a certain percentage each year unless he or she actively opts out of the increase.

This same concept can be applied to notice/SPD distribution. Employees would receive a postcard or similar notice that informs them where the SPD is available electronically and how to opt out of electronic receipt and request a hard copy.

- **Empower plan sponsors to use technology to make required compliance documents more accessible.** Developing required compliance communications as navigable PDF files makes it easier for employees to quickly get the information they need. For instance, hyperlinking the Table of Contents and linking key words to an SPD's glossary enhances the user experience, an experience that is quickly becoming the preferred way for adults to access information. Another great option for certain organizations is to develop the documents as eMags. The eMags are easy to print, if needed, but they also make for a robust online experience that can feature pop-ups for key terms, links to outside resources and embedded videos that can underscore key points. In addition, eMags can yield detailed analytics (for example, average time spent on a page, number of clicks on a particular link) that can inform future communications. Other technology such as microsites and apps can also be leveraged to make compliance documents easier to distribute and more user-friendly.
- **Test drive with the end users.** As communications and compliance professionals, we are used to the language and format of compliance. It's intrinsic to our everyday work. As such, we can sometimes become de-sensitized to the importance of developing communications in a language and format that is easily understandable and accessible to the "layperson." Therefore, any shift in approach – whether it impacts actual content or delivery – should be tested with those it impacts most. Whether it's via focus groups, a survey or another data-gathering method, it's important to build this step into any changes that are being considered.

Conclusion

Informing employees about their benefits and their rights under the law is an immense responsibility that also carries great opportunity to inform and educate. This can best be accomplished by listening to the voice of employees and reaching them where they are in terms of content and delivery. There has never been a better time, nor have there ever been more resources and channels available, to accomplish this very worthy objective.